



STATE OF WISCONSIN

In the Matter of



DECISION

FWP 165837

The attached proposed decision of the Administrative Law Judge dated July 16, 2015, is hereby adopted as the final order of the Department.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST". Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of October,
20

A handwritten signature in black ink, appearing to read "Thomas J. Engels".

Thomas J. Engels, Deputy Secretary
Department of Health Services



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

PROPOSED DECISION

FWP/165837

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 09, 2015, at Oshkosh, Wisconsin.

NOTE: The record was held open until July 10, 2015, to give the Petitioner an opportunity to submit a tax return. No documentation was received by the designated deadline.

The issue for determination is whether the agency correctly determined the Petitioner did not meet Non-ABAWD requirements and was therefore, an ABAWD.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] Economic Support Fair Hearing Coordinator
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. The Petitioner contacted the agency on April 20, 2015, to complete a review/renewal. The agency "went through ABAWD exemptions". (Exhibit 7)
3. On April 23, 2015, the agency determined that the Petitioner was an ABAWD - Able Bodied Adult Without Dependents. (Exhibit 7)
4. On April 29, 2015, the agency sent the Petitioner a referral to the FSET program. (Exhibit 5)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 6, 2015. (Exhibit 1)
6. Petitioner lives with his girlfriend, VN; VN's niece J, and J's minor children P and S. (Testimony of Petitioner)
7. J has her own FoodShare case and received benefits for herself, for P and for S. (Testimony of Petitioner)
8. J is responsible for the care of the children, but the Petitioner helps her out on occasion. When J is at work, the children are in the care of J's mother. (Testimony of the Petitioner)

DISCUSSION

The Petitioner filed an appeal to contest the agency's determination that he is an ABAWD.

I. Is the Agency's determination that Petitioner is an ABAWD an appealable issue?

The notice that triggered the Petitioner's appeal was the April 29, 2015 notice from the agency advising the Petitioner that he was referred to the FSET program. This notice did not contain any information about appealing the determination to the Division of Hearings and Appeal. (See Exhibit 5) It instead provides a form entitled "Proof of Work Requirement Exemption" that the Petitioner was told to file with CDPU. (Id.)

It does not appear that the Petitioner filed the form as directed, but instead contacted the agency on May 6, 2015. (See Exhibit 7) During that contact the agency provided the Petitioner with appeal instructions. (Id.)

7 CFR §273.15 (a) states, "Except as provided in §271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program."

An agency determination that a person is an ABAWD and must meet a work requirement does, in fact, affect the person's participation in the FoodShare program, because the person is then subject to certain work requirements and time limited benefits totaling three months within a three year period. See 7 CFR §273.24(b); FoodShare Wisconsin Handbook (FSH) §3.17.1.1 Accordingly, it is found that Petitioner may appeal a determination by the agency that he is an ABAWD.

I. Is the Petitioner a Non-ABAWD?

Petitioner asserts that he meets the definition of a Non-ABAWD because he lives with the minor children of his girlfriend's niece. It is undisputed that the niece and minor children receive FoodShare in a separate case.

The policy provisions in the FoodShare manual defining a Non-ABAWD are less than optimal.

FSH §3.17.1.4 defines a Non-ABAWD as an individual who is:

- 1) Under age 18 or age 50 or older;
- 2) Unable to Work;
- 3) Residing in a FoodShare household with a child under age 18 or
- 4) Pregnant

The FoodShare Wisconsin Handbook defines “Household” as, “all persons living or temporarily absent from the same residence.” FSH §3.3.1.1

Thus, one might interpret to FSH §3.17.1.4 to mean that a Non-ABAWD is anyone who lives with a child under age 19.

However, under the four criteria for determining Non-ABAWD status, FSH §3.17.1.4 also states, “Individuals who reside with and are included in the same food unit as a child under age 18 are non-ABAWDs...”

The FoodShare Wisconsin Handbook defines “Food Unit” as, “one or more persons who live in the same household and purchase and prepare food together for home consumption...” FSH §3.3.1.1

Thus, there is a conflicting standard stated in §3.17.1.4; on the one hand the child must be in the same household; on the other hand, the child must be in the same food unit.

Confusing the matter further is Example 5, under FSH §3.17.1.6 Verification of ABAWD Status..., which states:

When Julie applies for FS on March 25, she states that she lives with a roommate and the roommate’s minor child who does not receive FS. Verification of the roommate’s child in the home is requested on April 23, with a due date of May 3. Julie provides timely verification and is determined to be a Non-ABAWD

Nothing in that example indicates that Julie, her roommate, and the roommate’s child are in the same food unit.

Because the policy manual is confusing, one must turn to the Federal Regulations for clarification. The Federal Regulations supercede the FoodShare Wisconsin Handbook.

7 CFR §273.24 states the regulations concerning time limited benefits for able bodied adults.

Under 7 CFR §273.24(c) it states, “the time limit does not apply to an individual if he or she is:

- (1) Under 18 or 50 years of age or older;
- (2) Determined by the State agency to be medically certified as physically or mentally unfit for employment. An individual is medically certified as physically or mentally unfit for employment if he or she:

- (i) Is receiving temporary or permanent disability benefits issued by governmental or private sources;
 - (ii) Is obviously mentally or physically unfit for employment as determined by the State agency; or
 - (iii) If the unfitness is not obvious, provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel the State agency determines appropriate, that he or she is physically or mentally unfit for employment.
- (3) Is a parent (natural, adoptive, or step) of a household member under age 18, even if the household member who is under 18 is not himself eligible for food stamps;
 - (4) *Is residing in a household where a household member is under age 18, even if the household member who is under 18 is not himself eligible for food stamps;*
 - (5) Is otherwise exempt from work requirements under section 6(d)(2) of the FoodStamp Act, as implemented in regulations at §273.7(b); or
 - (6) Is pregnant. *(Emphasis added)*

The Federal Regulations define "household" differently than the FoodShare Wisconsin Handbook. According to the Federal Regulations, "household" is defined as follows:

7 CFR §273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

Given that the children received FoodShare benefits in a separate case, it is reasonable to conclude that they and their mother purchase and prepare food separately from the Petitioner and his girlfriend. Thus, the Petitioner and his girlfriend are one household under subsection (3) above, and the niece and her minor children are part of a separate household under subsection (3) above.

Because the Petitioner and the children do not reside in the same household, as that term is defined by 7 CFR §273.1, he does not qualify as a Non-ABAWD. The agency was correct in its determination.

Because the appeal rights associated with a determination that a person is an ABAWD are not clearly stated in the FoodShare Handbook, because there is a conflict within the FoodShare Manual regarding the definition of a non-ABAWD, and because the Federal Regulations define "household" differently than the Wisconsin FoodShare manual, this decision is being issued as proposed.

CONCLUSIONS OF LAW

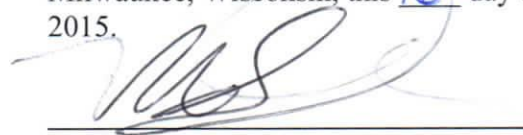
- 1) An individual may appeal an agency determination that he / she is an ABAWD.
- 2) The agency correctly determined that the Petitioner was an ABAWD.

THEREFORE, it is

ORDERED

That the petition is dismissed.

Given under my hand at the City of
Milwaukee, Wisconsin, this 16th day of July,
2015.



Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Interim Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final interim decision-making. The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).